

REMARKS

The Office Action of July 11, 2008 has been received and considered. Claims 1-36 are pending in this application. Claim 1 has been amended. Reconsideration of the application in view of the following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

Section 112

Claims 1-20 have been rejected under 35 U.S.C. § 112, first paragraph, on the grounds the recitation "wherein a surface of the resilient seal that is to contact the swimmer's body is substantially planar" in claim 1 is not set forth in the application as originally filed.

Claims 1-20 have been rejected under 35 U.S.C. § 112, second paragraph, on the grounds the recitation "wherein a surface of the resilient seal that is to contact the swimmer's body is substantially planar" in claim 1 is inaccurate since the surface of the seal is not planar as seen in the embodiments encircling the wearer.

Claim 1 has been amended to recite that surface of the resilient seal that is to contact the swimmer's body is free of recesses. As noted in the specification as filed at page 9, paragraph [39], in certain embodiments the seal may have a recess 80, which receives an outermost edge of the body of the swimsuit. Beyond this recess lies the portion of the seal that contacts the swimmer's body, and this portion is free of recesses.

Accordingly, claim 1 is now believed to be in proper form.

Section 102

Claims 1-3, 5, 6, 9-11, 13, 19-25, 28, 29, 31, and 33 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,088,832 to Newman ("Newman"). This rejection is respectfully traversed.

Newman fails to disclose or make obvious an article of swimwear including a swimsuit

body having at least one aperture configured to encircle a portion of a swimmer's body when the swimsuit body is worn by a user; and a resilient seal secured about the at least one aperture; **wherein a surface of the resilient seal that is to contact the swimmer's body is free of recesses**, as required by independent claim 1.

Newman discloses swimwear with a suction cup sealing strip 30 that has a plurality of suction cups 37 on its surface. Suction cups 37 are recesses in the surface of the sealing strip 30 that are designed to be secured to the user's skin, thereby preventing liquid and sand from passing through the opening about which the resilient material 31 is disposed. Thus, by design, the surface of Newman's sealing strip 30 that contacts the user's body is covered with recesses, namely, suction cups 37. One skilled in the art would also be taught away from modifying Newman's suction cup covered sealing strip so as to have a surface free of recesses, as the purpose of suction cups 37 would be defeated by removing them.

Newman also fails to disclose or make obvious an article of swimwear including a swimsuit body having at least one aperture configured to encircle a portion of a swimmer's body when the swimsuit body is worn by a user and **configured to be a leading edge of the swimsuit when the user is swimming**, as required by independent claim 21.

In Newman, sealing strip 30 is positioned about leg openings 25, 26 in the men's and women's suits, as well as about the waist in the women's suit. None of these locations is a leading edge of a swimsuit when a user is swimming. Rather, these locations are trailing edges when an individual swims. With the men's suit of FIG. 1 of Newman, the waist of the suit is the leading edge when the user is swimming. With the women's suit, the neckline and shoulder straps provide the leading edge of the suit when the user is swimming.

For these reasons, the rejection is improper and should be withdrawn.

Section 103

Claims 4, 7, 8, 12, 14-18, 26, 27, 30, 32, 34, and 35 have been rejected under 35 U.S.C. § 103(a) over Newman. This rejection is respectfully traversed.

As discussed above, Newman fails to disclose or make obvious an article of swimwear including a swimsuit body having at least one aperture configured to encircle a portion of a swimmer's body when the swimsuit body is worn by a user; and a resilient seal secured about the at least one aperture; **wherein a surface of the resilient seal that is to contact the swimmer's body is free of recesses**, as required by independent claim 1, from which claims 4, 7, 8, 12 and 14-18 depend.

Further, as discussed above, Newman fails to disclose or make obvious an article of swimwear including a swimsuit body having at least one aperture configured to encircle a portion of a swimmer's body when the swimsuit body is worn by a user and **configured to be a leading edge of the swimsuit when the user is swimming**, as required by independent claim 21, from which claims 26, 27, 30, 32, 34, and 35 depend.

Accordingly, the rejection is improper and should be withdrawn.

Conclusion

It is respectfully submitted that the pending claims are in form for allowance. Please apply any charges or credits to Deposit Account No. 19-0733.

Respectfully submitted,

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